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*Counsel for Mack Financial  
Services, a division of VFS US LLC*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:

## Chapter 11

## EASTERDAY RANCHES, INC., et al.,<sup>1</sup>

**Lead Case No. 21-00141-WLH11  
Jointly Administered**

**Debtor.**

**LIMITED OBJECTION TO DEBTOR'S  
MOTION FOR AN ORDER APPROVING  
BID PROCEDURES FOR THE SALE OF  
ASSETS**

Mack Financial Services, a division of VFS US LLC (“Mack Financial”), hereby files its Limited Objection to Debtor’s Motion for Order Approving Bid Procedures [Doc. 486], and in support states as follows:

## **I. SUMMARY OF ARGUMENT AND RELIEF REQUESTED**

1. In July through August 2020, Mack Financial financed the purchase of thirteen (13) new 2021 Mack trucks for Debtor Easterday Farms pursuant to a Master Loan and Security Agreement and three (3) Schedules thereto. Debtor's Schedules list the value of these Mack trucks (the "Mack Financial Collateral") at approximately \$1.92 Million and Debtor currently owes Mack Financial \$2,059,906 on these Schedules, not including accruing interest, fees and costs.

<sup>1</sup> The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141) and Easterday Farms, a Washington general partnership (21-00176-WLH11).

1       2. Through its Motion to for an Order Approving Bid Procedures for the Sale of  
2 Assets (“Sale Motion”), the Debtor intends to sell all of its assets through auction. Mack  
3 Financial has no objection to the Sale Motion, other than the request herein to exclude the Mack  
4 Financial Collateral from Debtor’s sale. Rather than going through Debtor’s proposed bid and  
5 auction process, Mack Financial seeks relief from stay in order to liquidate its collateral in a  
6 more efficient manner.

7       3. Importantly, there is no benefit to the Debtor of including the Mack Financial  
8 Collateral in its proposed sale. Debtor’s Sale Motion proposes the sale of multiple farms and  
9 farming operations spanning 22,500 acres, all owned in whole or part by Debtors. The Mack  
10 Financial Collateral is not intertwined or attached to any specific farm and does not increase the  
11 value of the Debtor’s operations. Moreover, these type of Mack trucks, new and used, are  
12 standard commercial vehicles available to any interested buyer. Accordingly, Mack Financial  
13 seeks an order excluding only the Mack Financial Collateral from any order approving Debtor’s  
14 Sale Motion.

## 15                   **II. FACTUAL AND PROCEDURAL HISTORY**

16       4. On or about July 23, 2020, Debtor Easterday Farms (“Debtor”) entered into a  
17 Master Loan and Security Agreement (“Master Loan”) with Mack Financial. A true and correct  
18 copy of the Master Loan is attached hereto as Exhibit 1.

19       5. Pursuant to the Master Loan, Mack Financial and Debtor agreed to terms which  
20 would govern subsequent schedules of specific equipment financing by Mack Financial for  
21 Debtor.

22       6. Subsequent to execution of the Master Loan, Debtor and Mack Financial entered  
23 into four (3) Schedules to the Master Loan as follows:

24  
25  
26

<b>Date</b>	<b>Sched. No</b>	<b>Equipment</b>	<b>Ex. No.</b>
July 23, 2020	007	(5) 2021 Mack Granite 86BT (5) Trinity Eagle Beds & Conveyors	Exhibit 2
July 24, 2020	008	(6) 2021 Mack Pinnacle 86T DayCab (6) Wet Kits and Additions	Exhibit 3
August 7, 2020	009	(2) 2021 Mack Pinnacle 64T Sleeper	Exhibit 4

7. A detailed description of all equipment financed by Mack Financial for Debtor is identified on each Schedules attached hereto as Exhibits 2 through 4.

8. Certificates of Title for the above-referenced Mack Financial Collateral financed by Mack Financial for Debtor are attached and included in each corresponding Schedule and Exhibit number 2 through 5. Mack Financial's title lien perfecting its security interest on all such Equipment is noted on each title. UCC filings perfecting Mack Financial's purchase money security interest in attachments to the vehicles are also included in each corresponding Schedule Exhibit.

9. The Petition Date payoff, current payoff and Debtor's estimated value of the Mack Financial Collateral for each Schedule to the Master Loan (collectively, the "Contracts") is as follows, not including accruing interest, fees and costs:

<b><u>Sched.</u></b>	<b><u>Petition Date Pavoff</u></b>	<b><u>Current Payoff</u></b>	<b><u>Equipment Value</u><sup>2</sup></b>
007	\$806,557.10	\$811,943.09	\$791,196.40
008	\$916,367.14	\$922,486.28	\$809,204.58
009	\$325,302.61	\$325,476.87	\$322,484.24
<b>TOTAL</b>	<b>\$2,048,226.85</b>	<b>\$2,059,906.24</b>	<b>\$1,922,885.22</b>

10. On or about February 1, 2021 (the "Petition Date"), Debtor commenced this Chapter 11 proceeding.

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<sup>2</sup> These values are based on Debtor's Amended Schedules of Assets.

11. Pursuant to the Sale Motion, the Debtor intends to sell substantially all of its assets.

### **III. LEGAL ARGUMENT**

12. Through this Motion, Mack Financial seeks an Order excluding the Mack Financial Collateral from the Debtor's sale of assets.

13. The Mack Financial Collateral consists of 13 Mack trucks, all model year 2021. By Debtor's own Schedules, Mack Financial is undersecured by at least \$137,000 without accounting for ongoing interest, fees and costs. Mack Financial will not be repaid in full from Debtor's sale of the Mack Financial Collateral. While the Sale Motion permits Mack Financial to credit bid its debt, there is no benefit to either Mack Financial or Debtor in requiring Mack Financial to wait until the auction is complete to confirm that no purchaser will pay more than "book value" for 13 used Mack trucks.

14. Mack Financial has a readily-available market for the resale of the Mack Financial Collateral that will: (a) maximize the resale value of these trucks; (b) minimize the time required to resell these trucks and (c) avoid any expenses, fees or costs associated with Debtor's Sale Motion.

15. Section 363(b) of the Bankruptcy Code allows Debtors to sell assets outside the ordinary course of business free and clear of liens only if one or more of the requirements set forth in 363(f) is satisfied. These factors include: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2 ) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

16. Here, (1) nonbankruptcy law does not permit sale of the Mack Financial Collateral; in fact the Master Loan contains a Borrower Representation that Debtor will not sell, rent or transfer the Equipment; (2) Mack Financial does not consent to the sale of its collateral;

1 (3) the Mack Financial Collateral will not be sold for an amount in excess of its lien (the  
2 Scheduled collateral values are less than the debt, and this is before any costs, fees or expenses  
3 of the sale allocated to Mack Financial); (4) the Mack Financial debt is not in dispute; and (5)  
4 while Mack Financial could be compelled to accept money satisfaction of its lien, *total*  
5 satisfaction of this lien is not proposed by Debtor and there is no legal or equitable proceeding  
6 through which Mack Financial would be required to accept a partial payment in satisfaction of its  
7 *senior* purchase money lien. *In re PW, LLC*, 391 B.R. 25, 46 (B.A.P. 9th Cir. 2008) (cramdown  
8 provisions of Bankruptcy Code do not meet the “legal or equitable” proceeding criteria).

9       17. For the reasons stated herein, Mack Financial objects *only* to the sale of the Mack  
10 Financial Collateral. Mack Financial has no objection to the sale of Debtor’s other assets.

11       **WHEREFORE**, Mack Financial Services, a division of VFS US LLC, respectfully  
12 requests this Court enter an Order as follows:

- 13           a. granting this Limited Objection;  
14           b. ruling that the Mack Financial Collateral as defined herein be excluded from  
15 Debtor’s sale of assets; and  
16           c. such further legal or equitable relief this Court deems just and appropriate.

17  
18 Dated: April 21, 2021

GORDON REES SCULLY MANSUKHANI, LLP

19       By: /s/ W. Gregory Lockwood  
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26           *Counsel for Mack Financial Services, a  
division of VFS US LLC*

## **CERTIFICATE OF SERVICE**

I certify that on the date below, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF System in this case. The Notice of Electronic filing for the foregoing identifies all recipients.

Dated: April 21, 2021

## GORDON REES SCULLY MANSUKHANI, LLP

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